

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY



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August 24, 2018

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **MEETING SUMMARY PER SECTION 1.1208 OF THE FCC'S RULES**
Schools and Libraries Universal Service Support Mechanism,
Docket No. 02-6

Dear Ms. Dortch:

On behalf of the Metropolitan Nashville Public Schools, #BEN 128258 (MNPS), this *ex parte* memorializes a meeting between representatives of MNPS and Commission staff. On August 22, 2018, MNPS legal counsel Corey Harkey had a conference call with Gabriela Gross of the Wireline Competition Bureau (WCB) regarding the Request for Review and/or Waiver filed on behalf of MNPS.¹ MNPS' appeal was supplemented with arguments made within two later submitted *ex parte* filings concerning a meeting on March 19, 2018² and procedural timeline argument.³

During the conference call with Ms. Gross on August 22, 2018, MNPS discussed the varying ways that the FCC could grant MNPS' appeal with limited application. Specifically, MNPS presented five different reasons why the FCC should grant its appeal without the issuance of a waiver. All of these arguments have been previously made either in the original filed appeal, one of the supplemental *ex parte* filings, and/or in the service provider's appeal filed on behalf of MNPS.⁴

¹ Request for Review and/or Waiver, *In the Matter of Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Metropolitan Nashville Public Schools FCC Form 471 Application Numbers 16105474, 161055248, 161055512, 161055858, 161055933, 161056945, 161057175 *et al.* (filed October 20, 2017).

² Meeting Summary Per Section 1.102 of the FCC's Rules (filed March 21, 2018).

³ Ex Parte on Procedural Timeline (filed June 15, 2018).

⁴ Request for Review and/or Waiver by Education Networks of America, Inc., *In the Matter of Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Application Nos. 16154574, 161055248 (filed March 9, 2018).

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Additionally, MNPS discussed the *Pribilof*⁵ case in which the FCC has recently provided guidance on the importance of notice. In that case, the Commission concluded that failure of Pribilof to see a news feed was not sufficient notice where Pribilof had no reason to expect the necessary information in a news feed. In this case, given the length of time between when the 2012 clerical error occurred and the demand letters that USAC says were sent via FedEx and USAC's failure to send the notices via MNPS' designated method of e-mail contact, MNPS had no reason to expect demand letters for the approximately \$1,500 debt, especially not via FedEx. With the FCC's desire for USAC to provide sufficient notice, it makes little sense why MNPS was not provided notice via its preferred method of contact.

Finally, while the five arguments could also be used as rationale to support a waiver, MNPS discussed how the public interest is not served with such a disproportionate response to the delay in payment- a \$1,500 debt resulting in a \$3.6 million funding application denial is unjust and future applications are unlikely to have such disparity. Thus, a waiver is also warranted if needed.

The attached handout summarizing the arguments presented was distributed.

Pursuant to Section 1.1206(b)(2) of the Commission's rules, an electronic copy of this letter is being filed for inclusion in the above-referenced docket and courtesy copies are being sent to the attendees. Please direct any questions regarding this filing to the undersigned.

Respectfully submitted,



Corey Harkey

Enclosures

Cc: Gabriela Gross (via email)

⁵ In the Matter of Pribilof School District, File No. SLD-161061517, FCC 18-188 (August 8, 2018).

MNPS E-rate Appeal –August 2018

We have below listed five rationales that the FCC could use to narrowly grant the appeal. Each is an independent reason that the FCC could use. The Commission can avoid granting appeals of the red light rule in the future by simply directing USAC to follow the Commission rules and its own procedures as specified below. We have also included a narrow rationale for a waiver request.

Appeal Grant

1. MNPS did not actually receive notice of the debt.
 - a. USAC never tried to contact MNPS's E-rate contact person via email—his preferred listed method of contact.
 - b. *To avoid this issue in the future, USAC simply has to use the contact method that the applicant has designated for notice.*
 - c. Also, note that USAC did not notify the general counsel for MNPS. If they attempted to, we have no knowledge of it and USAC have never told us that. USAC may have attempted to notify MNPS's E-rate contact person, but he did not receive notice until January 10, 2017.
 - d. USAC has some discretion as to whether to seek recovery and waited more than a year to do so in this instance. As such, MNPS would not have known it was going to receive a demand for the debt.
2. USAC should have never tried to collect this debt in the first place.
 - a. In 2009, the Wireline Competition Bureau directed USAC to not seek recovery of funds when the applicant inadvertently omitted a school in its district from the application. Notwithstanding this directive, this is the error that USAC used to seek recovery of the \$1,500. As such, USAC should have never sought recovery of this funding.
 - b. *To avoid this issue in the future, USAC simply has to seek recovery as directed by the Commission.*
3. USAC did not provide MNPS the proper amount of time to respond after sending the final notice as required by USAC's own procedures.
 - a. USAC is supposed to wait 60 days after sending the second demand letter before dismissing the application. Sixty days after the second demand letter would have been Jan. 20, 2017, instead of Jan. 10, 2017. MNPS contacted USAC on Jan. 11, 2017, to make arrangements to pay the debt, which is supposed to stay the application of the red light rule.
 - b. *To avoid this issue in the future, USAC only has to wait the appropriate amount of time before sending a Notice of Dismissal.*
4. Commission precedent requires entities to pay a debt within 30 days of *receiving notice* of that debt.
 - a. MNPS promptly paid the outstanding debt only two weeks after having received notification of the debt's existence.
 - b. *This can be the reason that the FCC grants MNPS's appeal on a narrow basis.*

5. If USAC had processed the FY 2016 applications by the Commission's September 2016 deadline, MNPS's application would not have still been pending in November for it to be available for dismissal.
 - a. If the FY 2016 application had been timely processed, once USAC placed MNPS was on the red light list in October or November, USAC would have only rejected invoices that were filed, instead of rejecting the entire \$3.6 million pending application. As soon as MNPS had repaid the debt, it could have refiled the invoices.
 - b. *To avoid this issue in the future, USAC can process applications by the Commission deadline.*

Waiver Request

6. The dismissal of the application is a disproportionate response to the delay in repayment—the penalty was 2,000 times more than the debt (\$1,500 vs. \$3.6 million). The Commission intended the red light rule to encourage payment (which MNPS did as soon as it was aware of the debt) but did not intend the rule to be punitive.
 - a. It is not in the public interest for the red light rule to result in such a disproportionate penalty. *The narrow reason can be that it is unlikely future applications will have such a disparity between the debt and the application dismissal amount.*